



DATE: October 4, 2016
TO: Colorado Springs City Council
FROM: Office of the City Attorney
SUBJECT: *Steve Rodriguez v. John Suthers, Police Officer "Sunada", Christopher Acker, Nathaniel Marsh, David Mignault; Case No. 2016CV328*

This memorandum is to apprise you of the facts alleged in the above-referenced case as you consider the claims made against Mayor John Suthers and the Officer involved.

NATURE OF THE CASE

Plaintiff, Steve Rodriguez, brought this claim in the District Court of El Paso County Colorado. Plaintiff alleges that Colorado Springs Police Officer, Clayton Sunada, was negligent in his duties by questioning and arresting Plaintiff, and by forcing Plaintiff to participate in a felony blood draw. In the body of his complaint, Plaintiff also claims that Officer Sunada acted in a willful and wanton manner with regard to the above allegations. Plaintiff alleges that Mayor Suthers is liable for Officer Sunada's actions under a theory of respondent superior.

Plaintiff alleges that on May 28, 2014, he and a friend, he identifies as "Jane Doe," were riding motorcycles together after leaving a "local bar." Plaintiff alleges that Ms. Doe lost control of her motorcycle and hit him. After the accident, Plaintiff took Ms. Doe home. While at Ms. Doe's home, Plaintiff claims that he met Officer Sunada. Plaintiff claims that Officer Sunada questioned him about the incident and that Officer Sunada made the determination to charge Plaintiff with vehicular assault. Plaintiff claims that Officer Sunada obtained a warrant for a felony blood draw and that Officer Sunada forced him to participate in the blood draw. Plaintiff claims that the next day he was informed that he would be facing misdemeanor charges instead of felony charges. Plaintiff contends that Officer Sunada was negligent in his decision to charge Plaintiff with vehicular assault.

Plaintiff claims that Mayor Suthers is responsible for Officer Sunada's actions. Plaintiff also believes that Mayor Suthers was familiar with Plaintiff and his situation and that Mayor Suthers negligently failed to purge the initial felony charge from Plaintiff's record. Plaintiff has also filed a claim against Judge Acker, the judge that he claims signed the

warrant for the blood draw; Nathaniel Marsh, the prosecuting attorney in Plaintiff's county court case; and David Mignault, the defense attorney who represented Plaintiff in his county court case. Plaintiff is seeking total damages in the amount of \$1,445,970.00.

According to the reports for this incident, Plaintiff and Ms. Lisa Williams were each riding a motorcycle traveling north on N. Tejon at or about the intersection of N. Tejon and Willamette Ave at around 11:43 pm on May 28, 2014. According to a witness the two were riding very close together and at points appeared to be touching or passing things back and forth. Ms. Williams admitted that the pair were "playing" or "messing around" while operating the motorcycles. The above mentioned witness stated that it appeared the motorcycles collided with each other just prior to Ms. Williams losing control of her motorcycle. This statement is corroborated by evidence of damage to both motorcycles consistent with a collision described by the witness. Plaintiff admitted to leaving the scene of the accident and helping Ms. Williams leave the scene as well.

After officers arrived at Ms. Williams' house, Officer Thomas questioned Plaintiff and offered him the opportunity to take roadside sobriety tests which Plaintiff declined. While Officer Thomas was engaged with Plaintiff, Officer Sunada was with other officers attempting to convince Ms. Williams to exit the house. Plaintiff was placed in Officer Sunada's cruiser and eventually transported to Memorial Hospital where three blood samples were obtained from Plaintiff. Officers were able to secure a warrant for Plaintiff's blood prior to the blood being taken. Plaintiff was ticketed for DUI, DUI Per Se, Careless Driving, No Insurance, Leaving the Scene of an Accident, and Failure to Report an Accident and released. Plaintiff's blood was tested and revealed a BAC of .105. Plaintiff subsequently pled guilty to one count of DWAI in connection with this case.

RECOMMENDATION

The Civil Action Investigation Committee has recommended that the City represent the Officer as required by the Colorado Governmental Immunity Act and the Peace Officer's Liability Act. The Officer was acting in the course and scope of his employment, and was acting in good faith. As usual, it is recommended that the City reserve the right to not pay any award of punitive damages.

Sincerely,



Brian Stewart, Attorney